

UNITED STATES DISTRICT COURT

for the

District of Oregon

United States of America)

v.)

JACOB MICHAEL GAINES,)

Case No. 3:20-mj-00153

REDACTED

Defendant(s)

**CRIMINAL COMPLAINT
BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of July 11, 2020 in the county of Multnomah in the
District of Oregon, the defendant(s) violated:

Code Section

18 U.S.C. §§ 111(a)(1) and (b)

Offense Description

Assault on a federal officer (Felony)



Certified to be a true and correct
 copy of original filed in this District

Dated: 07/12/2020

MARY L. MORAN, Clerk of Court
 U.S. District Court of Oregon

By: s/J. ProwellPages 1 Through 17

This criminal complaint is based on these facts:

See Attached Affidavit of Federal Protective Service Senior Special Agent David Miller

☒ Continued on the attached sheet.

/s/ Signed IAW Fed. R. Crim. P. 4.1

Complainant's signature

David Miller, Senior Special Agent, FPS

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
 telephone at 1:30 ~~pm~~ am p.m.

Date: July 12, 2020
*Judge's signature*City and state: Portland, Oregon

HON. JOLIE A RUSSO, U.S. Magistrate Judge

Printed name and title

DISTRICT OF OREGON

)

) ss: AFFIDAVIT OF SENIOR SPECIAL AGENT

County of Multnomah

)

David Miller

Affidavit in Support of a Criminal Complaint and Arrest Warrant

I, David Miller, being duly sworn, do hereby depose and state as follows:

Introduction and Agent Background

1. I am employed as a Senior Special Agent (SSA) with the Federal Protective Service (FPS) and have been employed by FPS since October 2009. I have participated in several investigations relating to the protection of federal facilities and personnel. I am currently assigned to Region 10 in Portland, Oregon as a general crimes agent. I am also a Task Force Officer for the United States Marshals Service (USMS) Pacific Northwest Violent Offender Task Force, a part time investigator for the FPS Office of Internal Investigations (OII), and a liaison for the Federal Bureau of Investigation (FBI) Joint Terrorism Task Force (JTTF). From April 2006 to October 2009, I was a Special Agent with the Naval Criminal Investigative Service (NCIS) serving as a member of the Major Crimes Response Team (MCRT) and a Foreign Counterintelligence agent. Before that, I was a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Yakima, Washington, a Federal Air Marshal, an ATF Inspector, and a police officer in several cities. I started my law enforcement career in 1991. I graduated from the FPS Advanced Individual Training Program in November 2009. I graduated from the NCIS Advanced Individual Academy in 2006. I graduated from the ATF National Academy in June of 2003. I graduated from the Federal Law Enforcement Training Center Criminal Investigator Course in March of 2003. I graduated from the Federal Law Enforcement Training Center Civil Aviation Security Specialist Course in February of 2002 and the ATF Inspector Course in January of 2001. I graduated from the U.S. Army Military

Intelligence Officer Basic Course in August of 1996 and the U.S. Army Military Intelligence Enlisted Course in February of 1988. I received a bachelor's degree in Social Sciences at Emporia State University in 1992 and an Associate Degree in Criminal Justice at Barton County Community College in 1995. As a result of my training and experience as an FPS Special Agent, I am familiar with federal criminal laws.

2. I submit this affidavit in support of a criminal complaint and arrest warrant for Jacob Michael GAINES. As set forth below, there is probable cause to believe, and I do believe, that GAINES committed the offense of Assaulting a Federal Officer (Felony), in violation of 18 U.S.C. §§ 111(a)(1) and (b).

3. The facts set forth in this affidavit are based on the following: my own personal knowledge, knowledge obtained from other individuals during my participation in this investigation, including other law enforcement officers, interviews of witnesses, my review of records related to this investigation, communication with others who have knowledge of the events and circumstances described herein, and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for an arrest warrant, it does not set forth each fact that I or others have learned during this investigation.

Applicable Law

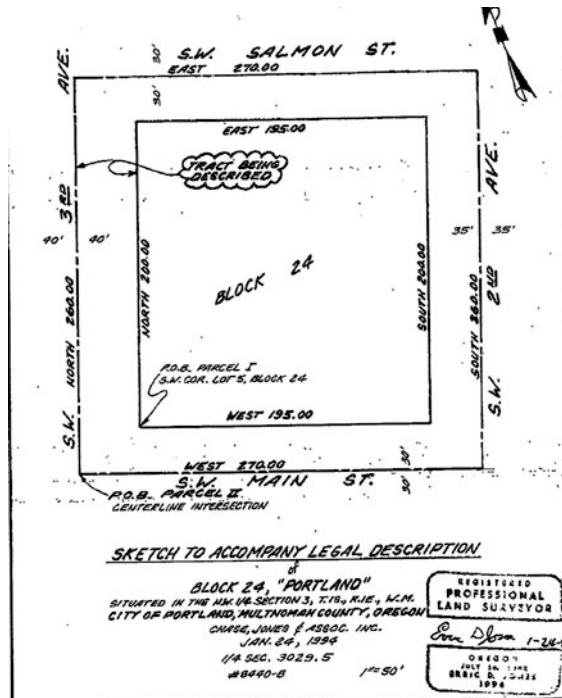
4. 18 U.S.C. § 111(a)(1) makes it an offense to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of official duties. Persons designated in § 1114 include any officer or employee of the United States or of any agency in any branch of the United States

government while such officer or employee is engaged in or on account of the performance of official duties, and any person assisting such an officer or employee in the performance of official duties. Under § 111(a), simple assault is a misdemeanor, but where the assaultive acts involve physical contact with the victim, the offense is a felony punishable by imprisonment up to 8 years. 18 U.S.C. § 111(b) provides for an enhanced penalty; where the assaultive conduct involves the use of a deadly or dangerous weapon, or causes bodily injury, the offense is punishable by a term of imprisonment up to 20 years.

Statement of Probable Cause

5. Since on or about May 26, 2020, protesters have gathered in Portland public areas to protest. Three of these public areas are Lownsdale Square, Chapman Square and Terry Schrunk Plaza. The Portland Justice Center, housing Portland Police Bureau's (PPB) Central Precinct and the Multnomah County Detention Center (MCDC), border these parks, as does the Mark O. Hatfield United States Federal Courthouse¹. The United States of America owns the entire city block (Block #24) occupied by the courthouse building depicted below:

¹ As part of my duties, I am familiar with the property boundaries for federal facilities in the Portland Oregon area. The federal government owns the entire city block occupied by the Mark O. Federal Courthouse. Easements have been granted for the sidewalks surrounding the facility. The property boundary extends past the sidewalks and into the streets surrounding the courthouse.



Daily protests have regularly been followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. Most violent of these impacting federal property occurred on May 28, 2020, when the Portland Field Office for the Immigration and Customs Enforcement (ICE) was targeted by a Molotov Cocktail. The Mark O. Hatfield Courthouse has experienced significant damage to the façade, glass, and building fixtures during the weeks following this incident. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. The most recent repair estimate for the damage at the Mark O. Hatfield Courthouse is in excess of \$50,000. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. FPS law enforcement officers, U.S. Marshal Service Deputies and other federal law enforcement officers working in the protection of the Mark O. Hatfield Courthouse have been subjected to assault, threats, aerial

fireworks including mortars, high intensity lasers targeting officer's eyes, thrown rocks, bottles and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

6. On July 11, 2020, at approximately 1:00 a.m., an unknown male, later identified as Jacob GAINES, was observed using a hammer to damage a barricaded wooden entrance at the Mark O. Hatfield Federal United States Courthouse (USCH). At that time, law enforcement personnel were staged inside the USCH to protect the facility and to respond to incidents. Law enforcement attempted to exit the USCH to prevent GAINES from breaching the barricaded wooden entrance, and to detain him. During the attempt to detain GAINES, GAINES struck a Deputy United States Marshal (DUSM1) with the hammer three times.² DUSM1 deflected GAINES' hammer blows to prevent serious injury. GAINES was taken into custody. The hammer was recovered on GAINES' person and recovered as evidence. Camera footage of this event was received by FPS personnel.

7. Shortly after the arrest, FPS personnel photographed DUSM1 at the USCH while he was wearing the same clothing and gear that he had on earlier when he confronted GAINES. DUSM1 was clearly identified as "POLICE." Due to the protective gear DUSM1 was wearing, he did not display any visible bruising in the areas where GAINES had struck him with the hammer. Below are pictures of the DUSM1 in uniform when assaulted, and the barricaded wooden door to the USCH as damaged by GAINES.

² The identity of the victim and federal agent witnesses referred to in this affidavit are known to me. All were working to help secure the Hatfield USCH on July 11, 2020 in performance of official duties. In order to protect the personal identification information of these Agents, their names and other identification information are being withheld from this affidavit at this time for their safety and privacy.



DUSM1 wearing uniform and protective gear at time of assault



Patch identifying DUSM1 as police



Courthouse plywood barricade with hole from GAINES' hammer strikes

8. SA Miller reviewed video footage of the assault involving DUSM1 and GAINES. The video footage was obtained from the Twitter account “Simulation Warlord Twitter @zerosum24.” Below is a screenshot of the Twitter video, which I believe captures GAINES’ acts of striking the courthouse plywood door, and subsequent assault of DUSM1.



The video shows DUSM1 attempting to disarm GAINES of the hammer as DUSM1 leaves the Hatfield USCH. GAINES is seen resisting and assaulting DUSM1 with the hammer during the

encounter. Below are additional screenshots from the Twitter video, depicting some of the activity, along with narrative from SA Miller.

GAINES outside the south entrance of Hatfield USCH with hammer in right hand:



GAINES with hammer over his head for prolonged period, waiting to strike at the wooden plywood door. An unknown subject is assisting to push the door with GAINES:



GAINES striking the door as DUSM1 attempts to push the door open:



DUSM1 exits the Hatfield USCH and turns towards GAINES:



GAINES pulls away, cocks his right arm back, and delivers a hammer strike on DUSM1:



GAINES strikes DUSM1 with hammer:



GAINES pulls away from DUSM1 and other agents assist:



GAINES is arrested and handcuffed on the ground:



Pictures of the DeWalt Hammer (Length: 13.75" / Weight: 4 lbs.) seized from GAINES:





9. On July 11, 2020, at approximately 4:30 a.m., FPS Special Agent 1 (FPS SA1) and FPS Special Agent 2 (FPS SA2) conducted a custodial interview of GAINES at the Hatfield USCH. GAINES confirmed his name is Jacob Michael Gaines and provided his social security number and date of birth. GAINES stated he is homeless, married, and has a sister in Cleburne, Texas. GAINES stated he was not told why he was detained and was not given his Miranda Rights. GAINES was read Miranda Rights at 4:37 a.m. by FPS SA1. GAINES stated he did not want to talk without a lawyer present.

10. SA Miller interviewed DUSM1 at the Hatfield USCH. He was identified with his agency issued credentials and DUSM1 is personally known to DUSM1. DUSM1 related the following: He was on duty on July 11, 2020 and attired in tactical law enforcement gear with “Police” markings. At approximately 1:10 a.m., the USMS tactical team was told to be prepared

to deal with a subject, later identified as GAINES, banging on the employee (south side) door of the Hatfield USCH. There was concern by law enforcement that the wooden plywood door would be breached and, if so, the inner glass door may be broken or compromised, causing an immediate danger to personnel inside the building. The plan was for a United States Border Patrol Tactical Team (BORTAC) to come out of another exterior door while the USMS team came out the south exterior door to apprehend GAINES. DUSM1 could hear multiple banging against the wooden plywood door and could tell something more solid than a fist was being used against the wood. DUSM1 was the front person of the USMS team near the wooden plywood door. From inside the building, he observed a hole get punched through the door and immediately relayed the information on the radio.

11. At approximately 1:15 a.m., the command was given to go outside and detain GAINES. DUSM1 attempted to push the wooden plywood door open but GAINES was pushing back against it. GAINES yelled: "I can see you mother fuckers through the cracks!" GAINES also yelled: "You mother fuckers are gonna' have to kill me," approximately three to four times. DUSM1 was able to push the door open, stepped out, and immediately turned right towards GAINES. DUSM1 saw the hammer in GAINES' right hand and grabbed GAINES' right wrist with his left hand while trying to grab GAINES with his right hand. GAINES was able to first strike DUSM1's left shoulder with the hammer in a downward motion and then in a sweeping motion struck the back of DUSM1's upper back/lower neck when GAINES pulled the hammer back. GAINES pulled away and was able to cock the hammer back over his own head and in a downward motion, strike DUSM1 directly for the third time, this time on the upper back, behind DUSM1's head. GAINES continued to pull away but DUSM1 held onto him and other team

members assisted in grabbing GAINES and placing him on the ground. DUSM1 and other team members handcuffed GAINES with a plastic zip tie. DUSM2 grabbed the hammer and gave it to DUSM1, who brought it back into the USCH for evidence processing. GAINES was brought back into the USCH for processing.

12. Through my training and experience, the hammer used to assault DUSM1 can be used as a dangerous weapon, with the ability to cause serious bodily injury or death.


Conclusion

13. Based on the foregoing, I have probable cause to believe, and I do believe, that Jacob Michael GAINES committed a violation of 18 U.S.C. §§ 111(a)(1) and (b), and in so doing made physical contact with DUSM1 and used a deadly or dangerous weapon.

14. Prior to being submitted to the Court, this affidavit, the accompanying complaint and the arrest warrant were all reviewed by Assistant United States Attorney (AUSA) Chris Cardani, who advised that in his opinion the affidavit and complaint are legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

/s/ Sworn to by telephone
In accordance with Fed. R. Crim. P. 4.1
David Miller
Senior Special Agent
Federal Protective Service

Sworn to by telephone or other reliable means at 1:30xxx a.m./p.m. in accordance with
Fed. R. Crim. P. 4.1 this 12 day of July 2020.



HONORABLE JOLEE A. RUSSO
United States Magistrate Judge